

DIVISION OF LOCAL GOVERNMENT SERVICES

New Residential Construction Off-Site Conditions Disclosure

Proposed Readoption: N.J.A.C. 5:38

Authorized By: Susan Bass Levin, Commissioner, Department of Community Affairs.

Commissioner's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Authority: N.J.S.A. 52:27D-3(e) and 46:3C-4 and 5.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2002-424

Submit comments by March 25, 2003 to:

Marc H. Pfeiffer

Deputy Director

Division of Local Government Services

PO Box 803

Trenton, New Jersey 08625-0803

The agency proposal follows:

### **Summary**

Pursuant to Executive Order No. 66 (1978), N.J.A.C. 5:38 will expire November 17, 2002. The Division of Local Government Services is proposing to readopt these rules, without amendment.

The rules proposed for readoption at N.J.A.C. 5:38 serve to disclose to the purchasers of new residential real estate property, the existence of certain off-site conditions which may materially affect the value of that property. These conditions include the following: hazardous discharge sites included on Federal and State lists; overhead electric utility transmission lines conducting 240,000 volts or more; electrical transformer substations; underground gas transmission lines; sewer pump stations with at least 500,000 gallons/day capacity; sewer trunk lines more than 15 inches in diameter; sanitary landfill facilities; public wastewater facilities; and airport safety zones. Persons who own, lease or maintain any of the specified off-site conditions are required to notify municipal clerks of the location of such sites in the municipality. In turn, municipal clerks are required to make the information available to the public. The Division of Local Government Services has reviewed these rules and has determined that they continue to be necessary, reasonable and proper for the purpose for which they were originally promulgated, as required by Executive Order 66 (1978). Accordingly, the Division proposes the readoption of the rules at N.J.A.C. 5:38 without amendment.

A summary of the rules proposed for readoption follows:

N.J.A.C. 5:38-1 sets forth general provisions which include the purpose of this chapter, an address and telephone number for all correspondence and inquiries concerning this chapter, and key definitions that are used in the chapter.

N.J.A.C. 5:38-2 sets forth the items of information that municipal clerks must make available to the public, and specifies the fees and charges that may be assessed to cover any mailing or reproduction costs that may be incurred by municipalities in providing information to the public.

N.J.A.C. 5:38-3 sets forth the information that the owners of off-site conditions must submit to the municipality. The required information must be submitted on forms that are included in the rules as Appendices A and B. The subchapter also sets forth the requirements for submitting maps in instances where off-site conditions include underground pipes or overhead lines. The proposed readoption of the rule at N.J.A.C. 5:38-3.3 provides for an annual update of the off-site conditions information. The rule requires that all lists and maps submitted to the municipal clerk must be updated by September 30 of each year.

The rules that are promulgated at N.J.A.C. 5:38 have effectively guided the disclosure of off-site conditions since the date of their adoption on November 17, 1997. The Division intends to continue these rules without amendment.

### **Social Impact**

The readoption of these rules will continue to have a positive impact on the public. The rules enable the purchasers of new residential construction to obtain information about the existence of off-site conditions that could negatively affect the value of the property, or otherwise preclude its full use and enjoyment. As such, the potential purchaser is afforded a broader framework for making a major investment decision.

### **Economic Impact**

Although a potential buyer of a new residential property can only benefit from the disclosure statute and these rules, the seller of such property stands the chance of forfeiting a sale if the existence of off-site conditions is determined to be detrimental. However, it is incumbent on a homebuilder or developer to sufficiently research a location prior to building there in order to realize the potential impact of an off-site condition on the marketability aspects of a new residential property. It should be noted that the Division is unaware of any particular instances where the rules at N.J.A.C. 5:38 have specifically caused a builder or developer any such financial hardship, to date.

The rules at N.J.A.C. 5:38 require persons and entities that either own, lease or maintain an off-site condition to prepare and file with municipal clerks the required maps and forms for the affected property. In some instances, the gathering and plotting of such

information was reported to be time-consuming and costly, especially for some of the large utility companies. This was due, in all likelihood, to the initial thrust of complying with the rules when they were first adopted in November, 1998. The job of updating the information annually is less onerous and less costly, so that the economic impact of continued compliance should be marginal.

### **Federal Standards Statement**

The rules make reference to certain types of off-site conditions that are designated in various sections of the United States Code as being either contaminated or affected by underground gas transmission lines. Specifically, the rules cite the National Priorities List prepared in accordance with 42 U.S.C. §§9601 et seq. as a reference for known contaminated sites, and 49 C.F.R. 192.3 as a source for identifying underground gas transmission lines. These references are given for the benefit of the prospective home purchaser to aid in identifying the location of sites containing these specific off-site conditions. The rules at N.J.A.C. 5:38 are not applicable to the sites themselves, nor do they relate to any Federal standard.

### **Jobs Impact**

The Department is unaware of any impact that these rules have had on the jobs market. Accordingly, the readoption of the rules is expected to be inconsequential from the standpoint of creating or losing jobs.

### **Agriculture Industry Impact**

The rules proposed for readoption have no impact on the State's agriculture industry.

### **Regulatory Flexibility Analysis**

The reporting requirements imposed by these rules generally have not been onerous to persons and small businesses, as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Although some of the large utility companies have reported that compliance with the rules has been costly due to the time and expense involved in mapping the location of certain off-site conditions, the Division is unaware of any significant impact on small builders and developers. In effect, the law and these rules require that the seller of new residential real estate inform prospective buyers that an off-site conditions list can be obtained from the clerk of the municipality. Once the information is given, the seller's role is essentially ended. There are no further reporting or recordkeeping requirements that the seller is obligated to fulfill.

### **Smart Growth Impact**

The rules proposed for readoption have no impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

**Full Text** of the proposed readoption follows:

## **CHAPTER 38 OFF-SITE CONDITIONS DISCLOSURE**

### **SUBCHAPTER 1. GENERAL PROVISIONS**

#### **5:38-1.1 Purposes**

(a) The purposes of this chapter are as follows:

1. To prescribe the form and manner of submission of off-site condition lists from their owners;
2. To specify for municipal clerks the form and manner of receiving off-site condition lists and maps, and making them available to the public; and
3. To ensure that the necessary information is presented in a readily available and easily understood way so that prospective purchasers of new residential construction will be able to locate off-site conditions in relation to the location of properties in which they are interested.

#### **5:38-1.2 Correspondence and inquiries**

(a) All correspondence and inquiries concerning this chapter should be addressed to:

Off-Site Conditions Disclosure  
Division of Local Government Services  
N.J. Department of Community Affairs  
PO Box 803  
Trenton, New Jersey 08625-0803  
(609) 984-6628  
Fax Number: (609) 633-6243

#### **5:38-1.3 Definitions**

(a) As used in this chapter, the following words and phrases shall have the following meanings, except where the context clearly indicates otherwise:

“Act means P.L. 1995, c.253 (N.J.S.A. 46:3C-1 et seq.), the “New Residential Construction Off-Site Conditions Disclosure Act.”

“Off-site conditions” means and includes the following:

- i. Overhead electric utility transmission lines conducting 240,000 volts or more;
- ii. Electrical transformer substations;
- iii. Underground gas transmission lines, as defined in 49 CF.R. 192.3;
- iv. Sewer pump stations capable of pumping 0.5 million gallons per day and sewer trunk lines in excess of 15 inches diameter;
- v. Sanitary landfill facilities, as defined pursuant to N.J.S.A. 13:1E-3;
- vi. Public wastewater treatment facilities; and

vii. Airport safety zones, as defined pursuant to N.J.S.A. 6:1-82.  
“Owner” means and includes any person who owns, leases or maintains an off-site condition.

“Actual reproduction cost” means those expenditures of funds involved in making copies of material to be provided to the public under the law pursuant to N.J.S.A. 47:1A-2, the intent being that the cost of copies to the public be only the reimbursement of direct expenditures incurred by the municipal government in making them. Cost of employee time in making copies shall only be considered a cost if the employee is paid for making copies outside of the employee’s normal work time.

(b) While the Act specifically includes other conditions in the definition of “off-site condition,” the definition in (a) above and this chapter are limited to those that must be reported by owners.

## **SUBCHAPTER 2. RESPONSIBILITIES OF THE MUNICIPALITY**

### **5:38-2.1 Information required to be made available.**

(a) The municipal clerk of each municipality shall make available to the public the following:

1. The publication entitled “Known Contaminated Sites in New Jersey—Municipal Report,” which shall be provided to municipal clerks by the Department of Environmental Protection. This document includes:

i. The latest list of sites on the National Priorities List prepared in accordance with 42 U.S.C. §§9601 et seq.; and

ii. The latest list of hazardous discharge sites from the master list prepared pursuant to N.J.S.A. 58:10-23.15 et seq.;

2. The latest list of sanitary landfill facilities provided by the Department of Environmental Protection;

3. “Listing of Off-site Conditions” forms provided by owners submitted pursuant to N.J.A.C. 5:38-3;

4. 24 inch by 36 inch copies or other approved maps provided by owners of off-site conditions pursuant to N.J.A.C. 5:38-3; and

5. Copies of the municipality’s tax map sheets, prepared pursuant to N.J.A.C. 5:38-3.2(d), that show any airport safety zones established by ordinance pursuant to N.J.S.A. 6:1-81 et seq., and N.J.A.C. 16:62.

(b) Maps and lists shall be made available for public inspection at no charge.

(c) The municipal clerk shall not charge the public more than the cost of reproduction for each page of these documents, and no fee may be charged for review of the documents by the public in the office of the clerk. If a member of the public requests the documents to be mailed, the charge may include the cost of packaging and postage.

(d) The municipal clerk shall have no responsibility to solicit lists or enforce submission of same from owners of off-site conditions.

(e) The municipality shall make copies of tax maps required available to an owner upon request. The municipality may charge the owner a fee not in excess of the cost of reproduction for each sheet.



### **SUBCHAPTER 3. RESPONSIBILITIES OF OWNERS**

#### **5:38-3.1 Submission of lists by owners**

(a) Owners shall submit the following information on each off-site condition that is an electric transformer substation, sewer pump station, or a public wastewater facility located within a municipality:

1. The name(s), address(es), and phone number(s) of the person(s) responsible for any such condition, with name and title of an accessible official to answer questions about the facility;

2. The name of municipality, street address, if assigned, block and lot number(s) or other relevant identifier of the subject condition, and a sequential reference number;

3. The New Jersey Department of Environmental Protection identification number, if assigned; and

4. A brief description of the subject condition (for example, electric transformer substation, sewage treatment plant, sewage pumping station, etc.).

(b) Forms available from the Department of Community Affairs shall be used for these purposes. Facsimiles that contain the same information may also be used by owners. These forms are incorporated herein by reference as chapter Appendices A and B.

#### **5:38-3.2 Submission of maps in lieu of lists by owners**

(a) Owner shall submit maps, in accordance with this section, for each off-site condition that is an underground gas transmission line, sewer trunk line, or electric utility transmission line.

(b) Maps shall be of one of the following types:

1. Those that meet the Geographic Information System (GIS) standard of the New Jersey Department of Environmental Protection, as described in N.J.A.C. 7:1 Appendix A "Mapping and Digital Data Standards", and where the base maps are supplemental with additional information that show place and road names that permit users to readily locate and identify properties. Owners are encouraged to utilize these maps wherever possible;

2. Color originals or black and white copies of United States Geological Survey (USGS) Quadrangle Topographical Maps (as revised), 1:24,000 scale (one inch = 2,000 feet);

3. Municipal tax map drawings prepared pursuant to N.J.S.A. 54:1-15 et seq.; or

4. Subject to the approval of the Department of Community Affairs, proprietary maps or drawings at a scale, that include geographic place and road names that permit users to readily locate and identify properties.

(c) All maps are to be reproduced on 24 inch by 36 inch sheets, or in accordance with other similar United States Geological Survey standards.

(d) If tax map drawings are utilized:

1. Standard 24 inch by 36 inch sheets shall be utilized, unless the municipality has smaller, appropriately scaled sheets available;

2. The owner shall obtain copies of tax map key sheets and individual sheets of the areas in each municipality where facilities are located; and

3. The owner shall include the required information on both the key map and individual tax maps sheets.

(e) Each map sheet is to include:

1. A dark, solid, dashed or patterned line that clearly indicates the route of the off-site condition. Lines are to be at least one-sixteenth of an inch wide.

2. A key indicating the scale of the map;

3. The type of facility shown by the line or lines;

4. The name(s) of the owner(s) and a phone number and address from where additional information can be obtained;

5. A disclaimer stating that the maps are only to be used for reference purposes and not for specific siting of facilities and that siting information is available from the owner or by calling the New Jersey One-Call Utility Service at (800) 272-1000 or (908) 232-9570; and

6. When USGS maps or maps showing regions larger than a single municipality are utilized, all off-site conditions of the owner that are within the coverage of the map shall be shown, regardless of the municipality in which the map is filed.

#### 5:38-3.3 Submission of information generally

(a) Lists and maps submitted to municipalities shall be updated annually with information on off-site conditions that shall be accurate as of August 31 of every year. Updated lists and maps shall be submitted to the clerk of each municipality not later than September 30 of each year.

(b) Nothing in this chapter shall be deemed to preclude the municipality, at its own expense, from consolidating map information from individual owners onto a single map or maps, as long as individual types of facilities are keyed and displayed differently, and lists of operators, phone numbers, and addresses are included. The municipal engineer shall certify to the accuracy of any such consolidated map.

#### APPENDIX A

##### New Jersey Residential Construction Off-Site Conditions Disclosure Act Listing of Off-Site Conditions

This form is filed with the municipal clerk of the municipality by the owner and is used to list the following off-site conditions required by N.J.S.A. 46:3C-2: overhead electric utility transmission lines conducting 240,000 volts or more; electrical transformer substations; underground gas transmission lines as defined in 49 C.F.R. 192.3; sewer pump stations designed for 0.5 million gallons per day and sewer trunk lines in excess of 15 inches diameter; and public wastewater treatment facilities.

This list identifies \_\_\_\_\_ off-site conditions owned, leased, or maintained

(insert type of conditions)

by

\_\_\_\_\_ a  
s defined in the

(insert name and address of provider)

“New Residential Construction Off-Site Conditions Disclosure Act,” P.L. 1995, c.253 (C.46:3C-1 et seq.), which as of \_\_\_\_\_

(insert date)

have been identified as existing within \_\_\_\_\_ Date of Filing: \_\_\_\_\_

(insert name of municipality)

Submitted on behalf of the owner: \_\_\_\_\_

\_\_\_\_\_ (signature) (printed name)

Name of person to contact for additional information on the off-site condition(s):

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_ Telephone number: \_\_\_\_\_

Check here if the list of off-site conditions reported herein includes maps filed in accordance with the instructions: [ ]

List of Conditions in \_\_\_\_\_, County of \_\_\_\_\_

Page \_\_\_\_ of \_\_\_\_

(name of municipality)

(name of county)

Ref. #	Description of Site	Block and Lot #	Street Address or location reference	DEP ID Number
1				
2				
3				
4				

#### APPENDIX B

Continuation of List of Off-Site Conditions Page \_\_\_\_ of \_\_\_\_

in \_\_\_\_\_, County of \_\_\_\_\_

(name of municipality)

(name of county)

Name of Owner: \_\_\_\_\_

Ref. #	Description of Site	Block and Lot #	Street Address or location reference	DEP ID Number


(Form OSC-2)

\_\_\_\_\_